

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CASE NO. 17-64177-PMB
)	
MICHAEL F. ANTONELLI and)	CHAPTER 7
NOREEN A. ANTONELLI,)	
)	
Debtors.)	
)	

**TRUSTEE'S MOTION FOR APPROVAL OF JOINT STIPULATION, MUTUAL
RELEASE, AND SETTLEMENT AGREEMENT BY, AMONG AND BETWEEN
TRUSTEE AND UNIQUE FUNDING SOLUTIONS, LLC**

Neil C. Gordon (“**Trustee**”), Chapter 7 Trustee for the estates of Michael F. Antonelli and Noreen A. Antonelli (the “**Estate**”), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and applicable law, files *Trustee’s Motion for Approval of Joint Stipulation, Mutual Release, and Settlement Agreement By and Between Trustee and Unique Funding Solutions, LLC* (the “**Motion**”) in order to approve a compromise and settlement agreement between the Trustee and Unique Funding Solutions, LLC (the “**Unique**,” together with the Trustee, the “**Parties**” and each, individually, a “**Party**”). In support of the Motion, the Trustee respectfully represents as follows:

JURISDICTION AND VENUE

1. On August 11, 2017 (the “**Petition Date**”), Michael F. Antonelli and Noreen A. Antonelli (the “**Debtors**”) filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code commencing the Case. On the same date, the Trustee was appointed interim trustee in the case.

2. On September 19, 2017, the meeting of creditors was held in the Case pursuant to section 341 of the Bankruptcy Code (the “**341 Meeting**”) and concluded. The Trustee became the

permanent trustee at the conclusion of the 341 Meeting.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(a) and 157(a).

4. Venue is proper pursuant to 28 U.S.C. § 1409.

BACKGROUND

5. Prior to the Petition Date, the Debtors were principals and owners of AIM Systems, Inc. (“**AIM**”) which provided a technology platform for marketing and payments to insurance agents and brokers.

6. AIM is a debtor in a separate bankruptcy, Case No. 17-64175-SMS, now pending in the United States Bankruptcy Court for the Northern District of Georgia.

7. Unique provides alternative financing to small businesses.

8. ABF is a debt and collection servicer to the alternative small business lending industry.

9. The law firm of Berkovitch & Bouskila, PLLC (“**B&B**”) represented both ABF and Unique in the New York state court actions against the Debtors and AIM.

10. On May 26, 2017, the Debtors, as principals of AIM and guarantors (the “**Guarantors**”), signed a merchant agreement with Unique for the sale of future receivables for an initial purchase price of in the amount of \$27,500.00 plus interest at fifteen (15%) percent for a total purchase price of \$41,222.50 (the “**Loan**”).

11. On the same day and in connection with the Loan, the Debtors executed a confession of judgment (the “**Confession of Judgment**”).

12. On June 20, 2017, B&B filed the *Confession of Judgment (Affidavit of Defendant)*, Case No. EF004629-2017, in the Orange County Supreme Court of New York (the “**Supreme Court**”) against Michael Antonelli and AIM, and in favor of their client, Unique.

13. On June 20, 2017, B&B filed the *Confession of Judgment (Affidavit of Defendant)*, Case No. EF004630-2017, in the Orange County Supreme Court of New York (the “**Supreme Court**”) against Noreen Antonelli and AIM, and in favor of their client, Unique.

14. On June 20, 2017, the Supreme Court entered judgments against the Debtors and AIM and in favor of Unique in the amounts of \$39,279.32 in Case No. EF004629-2017 and in Case No. EF004630-2017. The entry of the judgments and/or the creation of the judgment liens against the Debtors are hereinafter referred to as the “**Judgment Transfers.**”

15. Following the Judgment Transfers, B&B served a garnishment (the “**Garnishment**”) on Bank of America, N.A. (“**BOA**”) to seek to attach AIM’s or the Debtors’ bank accounts. The service of the garnishment and/or the creation of any lien resulting from the service of the garnishment are hereinafter referred to as the “**Garnishment Transfers.**”

16. B&B filed the Confession of Judgment in Case No. EF004629-2017 and in Case No. EF004630-2017 on behalf of Unique.

17. B&B served the Garnishment on behalf of ABF, an entity which may have been collecting the Funds for the benefit of Unique.

18. Subsequently, B&B served garnishments upon Branch, Banking & Trust Company, Tellus Brokerage Connections, Inc., and Protective Life and Annuity Insurance Company.

19. The Trustee contends that the Judgment Transfers and Garnishment Transfers occurred within ninety (90) days of the Petition Date and are avoidable under 11 U.S.C. § 547(b).

Settlement Agreement

20. In the interests of avoiding further litigation and associated risk and expense, the Parties have entered into a Settlement Agreement (the “**Agreement**”) memorializing the terms and

conditions under which they have agreed to resolve all such issues set forth above. A true and correct copy of the Agreement is attached to this Motion as Exhibit “A.”

21. Pursuant to the terms of the Agreement, the Parties have agreed to settle all of their claims and disputes between them by Unique consenting to the avoidance of the Judgment Transfers and Garnishment Transfers.

Relief Requested

22. By this Motion, the Trustee seeks entry of an order, pursuant to Rule 9019 of the Bankruptcy Rules and applicable law, granting this Motion and approving the terms of the Agreement, and authorizing the Trustee to consummate the settlement as provided in the Agreement.

Basis for Relief Requested

23. Rule 9019(a) of the Bankruptcy Rules provides, in pertinent part: “On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.”

24. The standard in the Eleventh Circuit for determining whether to approve a compromise or settlement pursuant to Rule 9019(a) was articulated in Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544 (11th Cir. 1990):

When a bankruptcy court decides whether to approve or disapprove a proposed settlement, it must consider:

(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id. at 1549.

25. Under the standard set forth above, the Trustee believes the Court should grant the Motion and approve the Agreement. The approval of the Agreement will allow the Trustee to avoid the judgment so Unique will not be a secured creditor.

26. Trustee is engaged in other related litigation, and there are other assets to administer.

27. The Trustee asserts that the terms of the Agreement fall well within the range of reasonableness for settlement of this matter and will benefit the Debtors' bankruptcy estate and its creditors, and therefore respectfully requests that the Court grant the Motion.

WHEREFORE, having filed this Motion, the Trustee respectfully requests that the Court: (i) grant the Motion; (ii) approve the Agreement; and (iii) grant the Trustee such other and further relief as the Court deems just and proper.

Respectfully submitted.

ARNALL GOLDEN GREGORY LLP


/s/ Neil C. Gordon

Neil C. Gordon

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Phone: 404-873-8500

Email: neil.gordon@agg.com

Attorney for the Chapter 7 Trustee

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CASE NO. 17-64177-PMB
)
MICHAEL F. ANTONELLI and) CHAPTER 7
NOREEN A. ANTONELLI,)
)
Debtors.)

**JOINT STIPULATION, MUTUAL RELEASE, AND
SETTLEMENT AGREEMENT BY, AMONG AND BETWEEN TRUSTEE
AND UNIQUE FUNDING SOLUTIONS, LLC**

This *Joint Stipulation, Mutual Release, and Settlement Agreement* (the “**Agreement**”) is by, among, and between Neil C. Gordon, Chapter 7 Trustee (“**Trustee**”) for the bankruptcy estate of Michael F. Antonelli and Noreen A. Antonelli (the “**Estates**”) and Unique Funding Solutions, LLC (“**Unique**”).

WHEREAS Michael F. Antonelli and Noreen A. Antonelli (“**Debtors**”) filed a petition for relief under chapter 7 of the Bankruptcy Code on August 11, 2017 (the “**Petition Date**”), thereby initiating Case No. 17-64177-PMB (the “**Case**”) pending in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division; and

WHEREAS on the same day, the Trustee was appointed to the Case as the interim Chapter 7 trustee pursuant to 11 U.S.C. § 701; and

WHEREAS on September 19, 2017, at the conclusion of the meeting of creditors conducted pursuant to 11 U.S.C. § 341(a), the Trustee became the permanent Chapter 7 trustee pursuant to 11 U.S.C. § 702(d); and

WHEREAS prior to the Petition Date, the Debtors were principals and owners of AIM Systems, Inc. (“**AIM**”) which provided a technology platform for marketing and payments to insurance agents and brokers; and

WHEREAS AIM is in a separate bankruptcy, Case No. 17-64175-SMS, now pending in the United States Bankruptcy Court for the Northern District of Georgia; and

WHEREAS on August 12, 2019, Trustee filed Adversary No. 19-05283-PMB (the "**Complaint**") against Unique and ABF Servicing, LLC ("**ABF**," collectively with Unique, the "**Defendants**"); and

WHEREAS the law firm of Berkovitch & Bouskila, PLLC ("**B&B**") represented both ABF and Unique in the New York state court actions against the Debtors and the AIM; and

WHEREAS Unique provides alternative financing to small businesses; and

WHEREAS ABF is a debt collection servicer to the alternative small business lending industry; and

WHEREAS on May 26, 2017, the Debtors, as principals of AIM and guarantors, signed a merchant agreement with Unique for the sale of \$41,222.50 of future receivables for an initial purchase price in the amount of \$27,500.00 (the "**Purchase**"); and

WHEREAS on the same day and in connection with the Purchase, the Debtors on behalf of themselves and AIM executed a confession of judgment (the "**Confession of Judgment**"); and

WHEREAS on June 20, 2017, B&B filed the *Confession of Judgment (Affidavit of Defendant)*, Case No. EF004629-2017, in the Orange County Supreme Court of New York (the "**Supreme Court**") against Debtor Michael Antonelli, and in favor of their client, Unique; and

WHEREAS on June 20, 2017, B&B filed the *Confession of Judgment (Affidavit of Defendant)*, Case No. EF004630-2017, in the Orange County Supreme Court of New York (the "**Supreme Court**") against Debtor Noreen Antonelli and AIM, and in favor of their client, Unique; and

WHEREAS on June 20, 2017, the Supreme Court entered judgments against the Debtors and AIM and in favor of Unique in the amount of \$39,279.32 in both Case No. EF004629-2017 and in Case No. EF004630-2017 (the “**Judgment Transfers**”); and

WHEREAS following the Judgment Transfers, B&B served a garnishment (the “**Garnishment**”) on Bank of America, N.A. (“**BOA**”) to seek to attach Debtors’ or AIM’s bank accounts (the “**Garnishment Transfers**”); and

WHEREAS on or about June 28, 2017, BOA attached and remitted \$48,383.60 (the “**Funds**”) from AIM’s BOA Account No. Ending-048 to ABF in response to the Garnishment (the “**Funds Transfer**”); and

WHEREAS the amount of the Garnishment was \$39,279.32, the same amount as the Unique judgment; and

WHEREAS Unique contends that it received only \$29,459.49; and

WHEREAS Unique believes that the rest of the Funds were retained by co-defendant ABF and/or the New York City Marshal that executed the garnishment on the account; and

WHEREAS no funds were received from the Debtors; and

WHEREAS Trustee and Unique mutually agree and desire to settle all claims and disputes between them by Unique consenting to the avoidance of the Judgment Transfers (the “**Agreement**”) as set forth more fully hereinafter; and

NOW, THEREFORE, as set forth below, the Trustee and Unique (together, the “**Parties**”) agree as follows:

1. Following execution of the Agreement, Trustee shall file a motion pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Settlement Motion**”), seeking the Bankruptcy Court’s approval of the Agreement (the “**Settlement Order**”).

2. Upon a final order of the Bankruptcy Court approving the Settlement Motion, the

Trustee shall file a voluntary dismissal of the Complaint as to Unique. Subject to Bankruptcy Court approval of this Agreement and receipt of the Settlement Amount, the Trustee shall be deemed to separately release Unique, from any and all claims, whether known or unknown, arising from any matters relating to or which could have been asserted in this Case, including but not limited to those arising under Chapter 5 of the Bankruptcy Code, and the Parties agree that the foregoing are third-party beneficiaries of this provision.

3. In consideration of the foregoing settlement, and subject to the Parties' obligations under this Agreement, Unique hereby remises, releases, discharges, and acquits the Trustee and the Debtor's Bankruptcy Estate from all claims, causes of action, contracts, disputes, agreements, covenants, demands, obligations, controversies, suits, cross-claims, torts, costs, losses, attorneys' fees, damages, liabilities and expenses, whether in law or in equity that he or others could have asserted against the Trustee and the Debtor's Bankruptcy Estate, including any claims arising under section 502(h) of the Bankruptcy Code, that it could otherwise assert against the Estate.

4. The Parties hereto acknowledge and represent that they have been fully advised by their respective legal counsel of their rights and responsibilities under this Agreement or, alternatively, have had an opportunity to retain the services of independent legal counsel and have affirmatively elected not to do so, that they have read, know and understand completely the contents hereof, and that they have voluntarily executed the same. The Parties hereto further hereby acknowledge that they have had input into the drafting of this Agreement or, alternatively, have had an opportunity to have input into the drafting of this Agreement. Accordingly, in any construction to be made of this Agreement, it shall not be construed for or against any party, but rather shall be given a fair and reasonable interpretation, based on the plain language of the Agreement and the expressed intent of the Parties. The Parties acknowledge and agree that by entering into this Agreement that neither party is making any admission regarding liability, that

they are compromising a disputed claim and that each party will bear its own respective legal fees and costs.

5. This Agreement contains the entire, final, complete, and exclusive agreement between the Parties to the subject matter contained herein. There are no other representations, agreements, arrangements, or understandings, oral or written, between the Parties relating to the subject matter contained herein, which are not fully expressed herein.

6. In any dispute over the interpretation or enforcement of this Agreement, Georgia law shall apply and such dispute shall be brought only before the Judge of the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division, presiding over the above-captioned bankruptcy case.

7. Upon the entered order approving the Settlement becoming final, Trustee will file a voluntary dismissal of the Complaint.

STIPULATED AND AGREED TO this 20 day of September, 2019.

ARNALL GOLDEN GREGORY LLP

UNIQUE FUNDING SOLUTIONS, LLC

By: 

By: 

Neil C. Gordon/State Bar No. 302387
171 17th Street, N.W., Suite 2100
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Tel.: (404) 873-8596 / Fax (404) 873-8597
Email: neil.gordon@agg.com

Jake Winograd
71 South Central Avenue, 2nd Floor
Valley Stream, NY 11580

Principal for Unique Funding Solutions, LLC

Attorneys for Chapter 7 Trustee Neil C. Gordon

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of *Trustee's Motion for Approval of Joint Stipulation, Mutual Release, and Settlement Agreement By, Among and Between Trustee and Unique Funding Solutions, LLC* by depositing a copy of the same in the United States Mail addressed to:

Office of the United States Trustee
362 Richard B. Russell Building
75 Ted Turner Drive, S.W.
Atlanta, GA 30303

Jonathan A. Akins
Schreeder, Wheeler & Flint, LLP
Suite 800
1100 Peachtree Street, NE
Atlanta, GA 30309

Jake Winograd, Principal
Unique Funding Solutions, LLC
71 South Central Avenue
2nd Floor
Valley Stream, NY 11580

Joe Lieberman
The Law Firm of Joe Lieberman, P.C.
P.O. Box 356
Cedarhurst, NY 11516

Dated: September 23, 2019.

By: _____
Neil C. Gordon

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CASE NO. 17-64177-PMB
)
MICHAEL F. ANTONELLI and) CHAPTER 7
NOREEN A. ANTONELLI,)
)
Debtors.)
)
_____)

NOTICE OF HEARING

TO: The Debtor, United States Trustee, all Creditors and all Parties Requesting Notice
Pursuant to Federal Rules of Bankruptcy Procedure 2002

NOTICE IS HEREBY GIVEN, that Neil C. Gordon, Trustee for the Estates of Michael F. Antonelli and Noreen A. Antonelli (the “**Trustee**”) has filed his Motion for Approval of Compromise and Settlement (the “**Motion**”) Between Trustee and Unique Funding Solutions, LLC (“**Unique**,” and together with the Trustee, the “**Parties**”). In the interests of avoiding further litigation and the costs and risks associated therewith, the Parties have entered into a Settlement Agreement (the “**Agreement**”), pursuant to which Unique consents to the avoidance of the Judgment Transfers and Garnishment Transfers.

The Motion is available for review in the Clerk’s Office, United States Bankruptcy Court, during normal business hours or online at <http://ecf.ganb.uscourts.gov> (registered users) or at <http://pacer.psc.uscourts.gov> (unregistered users).

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion in **Courtroom 1202**, United States Courthouse, 75 Ted Turner Drive, S.W., Atlanta, Georgia, at **2:00 p.m. on October 28, 2019** (the “**Hearing**”).

Your rights may be affected by the Court’s ruling on this pleading. You should read this pleading carefully and discuss it with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.). If you do not want the Court to grant the relief sought in this pleading or if you want the Court to consider your views, then you and/or your attorney must attend the Hearing. Prior to the Hearing, you may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. The address of the Clerk’s Office is:

Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, S.W., Atlanta, Georgia 30303.
You must also mail a copy of your response to the undersigned at the address stated below.

Dated: September 23, 2019 ARNALL GOLDEN GREGORY LLP

/s/ Neil C. Gordon

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Phone: (404) 873-8500/Fax: (404) 873-8501
neil.gordon@agg.com
Attorneys for Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the following parties with a true and accurate copy of the foregoing *Notice of Hearing* by depositing same in the United States mail, postage prepaid, addressed to the following parties:

Office of the United States Trustee
362 Richard B. Russell Building
75 Ted Turner Drive, S.W.
Atlanta, GA 30303

Jonathan A. Akins
Schreeder, Wheeler & Flint, LLP
Suite 800
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Unique Funding Solutions, LLC
71 South Central Avenue
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Valley Stream, NY 11580

Joe Lieberman
The Law Firm of Joe Lieberman, P.C.
P.O. Box 356
Cedarhurst, NY 11516

All creditors listed on Exhibit "A" hereto.

This 23rd day of September, 2019.

/s/ Neil C. Gordon

Neil C. Gordon

EXHIBIT A

Label Matrix for local noticing
113E-1
Case 17-64177-pmb
Northern District of Georgia
Atlanta
Fri Sep 20 17:04:29 EDT 2019

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Fulton County Tax Commissioner
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Atlanta, GA 30303-3446

Fulton County Tax Commissioner
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PO Box 77053
Minneapolis, MN 55480-7753

Wells Fargo Bank, N.A.
Corporation Service Company
40 Technology Pkwy S Ste 300
Norcross, GA 30092-2924

Wells Fargo Bank, N.A.
Wells Fargo Card Services
PO Box 10438, MAC F8235-02F
Des Moines, IA 50306-0438

Yale Club
50 Vanderbilt Ave
New York, NY 10017-3878

Yellowstone Captial
30 Broad St Fl 14
New York, NY 10004-2906

Zachter PLLC
30 Wall St Fl 8
New York, NY 10005-2205

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Branch Banking & Trust Company
Bankruptcy Section 100-50-01-51
P.O. Box 1847, 100-50-01-51
Wilson, NC 27894-1847

Forward Financing
36 Bromfield St Fl 2
Boston, MA 02108-5221

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)American Express Centurion Bank
c/o Becket and Lee LLP
PO Box 3001
Malvern PA 19355-0701

(u)BRANCH BANKING & TRUST COMPANY (BB&T)

(d)Neil C. Gordon
Arnall, Golden & Gregory, LLP
Suite 2100
171 17th Street, NW
Atlanta, GA 30363-1031

(u)PNC Bank, National Association

(u)Toyota Motor Credit Corporation

(u)Wells Fargo Bank, N.A.

End of Label Matrix
Mailable recipients 97
Bypassed recipients 6
Total 103